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Filing date: **01/24/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051860
Party	Defendant Michael Akkawi
Correspondence Address	MICHAEL AKKAWI 8 PLUM HOLLOW ROAD EAST FALMOUTH, MA 02536 UNITED STATES miltoliver@gmail.com, miltonoliver@IEEE.org
Submission	Other Motions/Papers
Filer's Name	Milton Oliver
Filer's e-mail	miltonoliver@ieee.org
Signature	/Milton Oliver/
Date	01/24/2012
Attachments	CAPE-COD-WATCH-MOTION-for-LEAVE2.pdf ( 24 pages )(746747 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No.: 3,433,601  
Mark: CAPE COD WATCH

La Montre Hermès S.A.,

Petitioner,

vs.  
MICHAEL AKKAWI,

Registrant.

Cancellation No.: 92-051 860

MOTION FOR LEAVE TO  
SUBMIT BELATED INITIAL DISCLOSURES  
OR TO STRIKE NOTICE OF RELIANCE

Registrant Akkawi hereby requests leave to submit belated initial disclosures, in compliance with Rule 120(a)(3).

GROUND

At the beginning of this proceeding in Dec. 2009, Registrant Akkawi, a local jeweler, appeared Pro Se, and submitted an informal Answer on JAN. 28, 2010. After retaining counsel, Registrant filed an Amended Answer on FEB. 23, 2010. Petitioner Hermes then submitted an Amended Petition on JUL. 14, 2010, and Registrant Akkawi served his Answer to the First Amended Petition on SEP. 21, 2010.

Petitioner served extensive discovery requests on Registrant, was dissatisfied with the responses, and obtained an Order to Compel on OCT. 7, 2010. Registrant Akkawi complied with the Board's Order by providing interrogatory answers and voluminous business documents, including a stack of watch sales receipts more than four inches thick, essentially disclosing (under protective order) the names and addresses of **all its customers** for the goods sold under the mark in dispute, over a period of years (2007-2010). These documents were dispatched on DEC. 10, 2010 from Mashpee MA and received on DEC. 13, 2010 at the offices of Petitioner's counsel, FOLEY & LARDNER. Attached is US Postal Service "Track & Confirm" receipt number 0309 2880 0000 2452 2014, confirming the foregoing.

Registrant on JAN. 15, 2011 served on Petitioner Registrant's First Set of Document Requests to Petitioner and Registrant's First Set of Interrogatories to Petitioner. Copies are attached hereto as Exhibits A & B.

Despite Registrant's good faith efforts and voluminous disclosures to Petitioner, Petitioner Hermes has refused to provide any responses to Registrant's interrogatories and has refused to provide any responses to Registrant's requests for production of documents.

In refusing to provide discovery responses, Petitioner relies upon the decision Dating DNA v. Imagini, 94 USPQ 2d 1889 (TTAB 2010) stating that compliance with initial disclosures, per Rule 120, is a prerequisite for grant of a motion to compel discovery, and cannot be cured after discovery has closed. Needless to say, Petitioner stated its unwillingness to reopen the discovery period.

Despite the failure of Petitioner Hermes to provide any

evidence of its asserted prior use of CAPE COD formative marks, Petitioner has submitted a Notice of Reliance on OCT. 7, 2011, contending that its use of CAPE COD 2 ZONES pre-dates Registrant's use of CAPE COD WATCH.

Registrant Akkawi is ready and able to provide any information required by Rule 120(a)(3) which has not already been provided. Most or all of this same information was provided to Petitioner **more than a year ago**. Thus, there is no justification for Petitioner's contention that it is entitled to acceptance at face value of its alleged dates of use, without providing any of the documentation requested by Registrant during discovery.

Without the information requested by Registrant, Registrant cannot adequately formulate a response to Petitioner's Notice of Reliance. Therefore, Registrant moves the Board to either

(A) grant Registrant leave to submit Initial Disclosure material within 30 days of the Board's Order or

(B) strike Petitioner's Notice of Reliance, and dismiss the Petition for Cancellation.

Respectfully submitted,  
Michael Akkawi  
by his attorney:

/Milton Oliver/  
Milton Oliver  
OLIVER INTELLECTUAL PROPERTY  
PO BOX 1670  
COTUIT MA 02635

DATE: JAN. 23, 2012

MASHPEE MPO  
MASHPEE, Massachusetts  
026499998  
4371430649-0096  
12/10/2010 (800)275-8777 05:30:09 PM

===== Sales Receipt =====  
Product Sale Unit Final  
Description Qty Price Price  
NEW YORK NY 10016 \$12.35  
Zone-3 Priority Mail  
8 lb. 6.8 oz.  
Expected Delivery: Mon 12/13/10  
Delivery Confirmation \$0.70  
Label #: 03092880000024522014  
=====

Issue PVI: \$13.05  
NEW YORK NY 10016 \$10.70  
Zone-3 Priority Mail  
Medium Flat Rate Box  
5 lb. 5.50 oz.  
Expected Delivery: Mon 12/13/10  
Delivery Confirmation \$0.70  
Label #: 03092880000024522021  
=====

Issue PVI: \$11.40  
=====

al: \$24.  
=====

id by: \$24.  
bit Card  
Account XXXXXXXXXXXX541  
Approval 56539  
Transact #: 515  
23903410  
Receipt 000028

Order stamp at USPS. Buy/ship or  
call 1-800-Stamp24. Go to  
USPS.com for shipping & print  
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(Please Print Clearly)  
New York NY 10016  
DELIVERY CONFIRMATION NUMBER: 0309 2880 0000 2452 2021  
PS Form 152, May 2002

Postmark  
Here  
MASHPEE, MA  
DEC 10 2010  
32648

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**ANDREW BAUM, ESQ.**  
**FOLEY & LARDNER**  
**90 PARK AVENUE**  
**NEW YORK, NY 10016-1314**

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## Track & Confirm

### Search Results

Label/Receipt Number: **0309 2880 0000 2452 2014**Expected Delivery Date: **December 13, 2010**Class: **Priority Mail®**Service(s): **Delivery Confirmation™**Status: **Delivered**

Your item was delivered at 9:16 am on December 13, 2010 in NEW YORK, NY 10016.

#### Detailed Results:

- Delivered, December 13, 2010, 9:16 am, NEW YORK, NY 10016
- Out for Delivery, December 13, 2010, 7:15 am, NEW YORK, NY 10199
- Sorting Complete, December 13, 2010, 7:05 am, NEW YORK, NY 10199
- Arrival at Post Office, December 13, 2010, 6:50 am, NEW YORK, NY 10199
- Processed through Sort Facility, December 11, 2010, 1:55 am, NASHUA, NH 03063
- Acceptance, December 10, 2010, 5:26 pm, MASHPEE, MA 02649

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United States Postal Service  
Department of JusticeUnited States Postal Service  
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# EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No.: 3,433,601  
Mark: CAPE COD WATCH

La Montre Hermès S.A.,

Petitioner,

vs.

**Cancellation No.: 92-051 860**

MICHAEL AKKAWI,

Registrant.

REGISTRANT'S FIRST SET OF  
DOCUMENT REQUESTS TO PETITIONER

Registrant, by his attorney Milton Oliver, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, requests that Petitioner, produce, within thirty (30) days of service hereof, the documents and things identified below for inspection and copying at the offices of Oliver Intellectual Property LLC, 7 Teal Circle, Mashpee, MA 02649.

INSTRUCTIONS

1. These Requests for Documents are continuing in nature and any documents or things obtained, discovered or formulated by Petitioner subsequent to its production hereto, which would have been responsive to these Requests, shall be produced promptly to Registrant, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.



2. The documents requested herein are intended to include all documents in the possession, custody, or control of Petitioner and include, unless otherwise specifically indicated, its predecessor(s), agents, legal representatives, divisions, subsidiary entities, both controlled and wholly or partially, directly or indirectly owned, and all other related entities (as defined by 15 U.S.C. § 1127), and the past and present employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which the Petitioner claims the right to use and/or register any mark containing the formative CAPE and any variants thereof.

3. If in its possession, custody or control, Petitioner shall produce the originals of all documents requested herein, as well as any and all copies of documents which bear any mark or notation not present on the original.

4. If, for any reason, there are no responsive documents to a particular request, Petitioner shall so state.

5. No part of a Request shall be left unanswered or documents and things not produced, merely because an objection is interposed as to any other part of a Request.

6. If Petitioner cannot respond to any of the following Requests in full, after exercising due diligence to secure the full response, Petitioner should respond to the Request to the best of its present ability, state that the response is based upon what Petitioner believes to be incomplete information, give the grounds for being unable to fully and sufficiently respond to the Request, and produce whatever documents, information, things or materials Petitioner has in its possession, custody and/or control that are or may be responsive to the particular Request.

7. If any document or information requested herein is withheld on a claim of privilege, or other objection, including the attorney client or work product doctrine, Petitioner shall provide the following information for each document:

- a) the reason for withholding the document;
- b) identify the nature of the privilege (i.e., work product) that is being claimed;
- c) the place, approximate date, and manner of recordation or preparation of the document;
- d) the number of pages and attachments to the document;
- e) the name and title of the sender and the name and title of each recipient of the document;
- f) the name and title of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
- g) the name and position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;
- h) a brief description of the subject matter contained in the document;
- I) the numbers of the Requests herein to which the document is responsive;
- j) the identity and position of the person or persons supplying the attorney with the information requested in the subsections above.

#### DEFINITIONS

The definitions set forth in Petitioner's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference.

DOCUMENT REQUEST No. 1:

Documents sufficient to identify and describe fully all goods offered, or to be offered, for sale, in the United States, in connection with any mark of Petitioner which incorporates the term CAPE.

DOCUMENT REQUEST NO. 2:

Documents sufficient to identify and describe fully all goods offered or to be offered for sale, in the United States, in connection with any mark of Petitioner which describes a geographic location other than the actual manufacturing location of the goods.

DOCUMENT REQUEST NO. 3:

One sample of each label, tag, and item of packaging bearing the mark CAPE COD 2 ZONE that is used in connection with Petitioner's Goods.

DOCUMENT REQUEST NO. 4:

All documents concerning the selection, adoption, creation, and/or acquisition of each mark of Petitioner which contains or contained the formative CAPE.

DOCUMENT REQUEST NO. 5:

All documents concerning any opinion of counsel as to Petitioner's right to adopt or use each mark containing the formative CAPE.

DOCUMENT REQUEST NO. 6:

Any trademark searches or investigations conducted in connection with the any mark, of a party other than Petitioner, which contains or contained the formative CAPE.

DOCUMENT REQUEST NO. 7:

All documents concerning any agreement with any manufacturer of any of Petitioner's Goods.

DOCUMENT REQUEST NO. 8:

All documents concerning any agreement with any person with respect to advertising, marketing, distribution, or selling any of Petitioner's Goods.

DOCUMENT REQUEST NO. 9:

Current price lists for products sold in the U.S. in connection with any mark of Petitioner containing the formative CAPE.

DOCUMENT REQUEST NO. 10:

Documents sufficient to disclose the volume of sales of each of Petitioner's Goods under a mark containing the formative CAPE, to date, in units and dollars.

DOCUMENT REQUEST NO. 11:

All documents which any expert retained in connection with the instant proceeding has seen, may use or rely upon in the course of arriving at any opinions or conclusions at any trial or other hearing in this case.

DOCUMENT REQUEST NO. 12:

All reports, memoranda, correspondence or other documents concerning the opinions or conclusions of any experts consulted or retained by Petitioner or by any person or persons acting for or on Petitioner's behalf in connection with this action.

DOCUMENT REQUEST NO. 13:

All strategic marketing, or business plans or related documents or communications concerning the sale, advertising, promotion, or intended sale, advertising, promotion of marketing of products, within the United States, in connection with any mark of

Petitioner containing the formative CAPE.

DOCUMENT REQUEST NO. 14:

All documents, including market research, consumer surveys, focus groups and internal memos, concerning the likelihood of confusion between Registrant's Mark and Petitioner's Marks.

DOCUMENT REQUEST NO. 15:

All documents relating to any communication from a customer or potential customer which evidences a belief that a product offered by Petitioner under any CAPE COD formative actually is manufactured on the territory known as Cape Cod.

DOCUMENT REQUEST 16:

All documents concerning, referring, or relating to Registrant or any products sold by Registrant under the trademarks CAPE COD or CAPE COD WATCH.

DOCUMENT REQUEST NO. 17:

Representative samples of all advertisements and other promotional materials which have been used in connection with Petitioner's Goods bearing any mark containing the formative CAPE.

DOCUMENT REQUEST NO. 18:

All documents concerning any confusion or mistake on the part of any person regarding Registrant or Registrant's trademarks CAPE COD or CAPE CODE WATCH on the one hand, and Petitioner, Petitioner's business, Petitioner's Mark and/or Petitioner's Goods on the other hand.

DOCUMENT REQUEST NO. 19:

All documents concerning the belief of any person that there is an association between Registrant or Registrant's products and any products sold by Petitioner under any mark of Petitioner

containing the formative CAPE.

DOCUMENT REQUEST NO. 20:

A specimen of each of Petitioner's Goods or, alternatively, a clear photograph of each of Petitioner's Goods showing Petitioner's Mark, if it is affixed to such Goods.

DOCUMENT REQUEST NO. 21:

Documents sufficient to disclose each and every purchaser of Petitioner's Goods sold under any mark of Petitioner containing the formative CAPE since the first use in commerce of each said mark.

DOCUMENT REQUEST NO. 22:

All documents relating to any application by Petitioner for registration of a term containing a geographic element, in which any government official contended that the geographic element was merely descriptive, or deceptively misdescriptive.

Respectfully submitted,

MICHAEL AKKAWI

DATE: JAN. 15, 2011

by his counsel

/Milton M. Oliver/

Milton M. Oliver, Esq.  
OLIVER INTELLECTUAL PROPERTY  
7 TEAL CIRCLE  
MASHPEE MA 02649-3676  
TEL: 774-521-3058  
FAX: 774-521-3062

CERTIFICATE OF SERVICE

I hereby certify that the attached document REGISTRANT'S FIRST SET OF DOCUMENT REQUESTS TO PETITIONER was served on Petitioner by mailing a copy, first-class mail, to its counsel:

FOLEY & LARDNER LLP  
Att'n: Andrew Baum  
90 Park Avenue  
NEW YORK, NY 10016-1314

this 15th day of JAN. 2011.

Milton Oliver  
Milton Oliver

# EXHIBIT B



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No.: 3,433,601  
Mark: CAPE COD WATCH

La Montre Hermès S.A.,

Petitioner,

vs.  
MICHAEL AKKAWI,

Registrant.

**Cancellation No.: 92-051 860**

FIRST SET OF INTERROGATORIES  
TO PETITIONER La Montre Hermès S.A.

Pursuant to Rule 2.120 of the Trademark Rules of Practice, Rules 26 and 33 of the Federal Rules of Civil Procedure, and Section 400 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Registrant Michael Akkawi requests that Petitioner, La Montre Hermès S.A., answer the following Interrogatories fully and separately in writing and under oath within thirty (30) days of the date of service hereof. These Interrogatories are deemed to be continuing in nature and any further information that may be discovered subsequent to the service of the answers should be brought to the attention of Registrant through supplemental answers within a reasonable time following such discovery.

DEFINITIONS

a. The term "Petitioner" refers to La Montre Hermès S.A. , its parent Emile Hermès SARL, their affiliates, partners or other related entities as well as any predecessor, subsidiary, licensor, licensee, officer, director, partner, attorney, or

other person in privity with Petitioner. In any instance, where an Interrogatory answer differs as between Petitioner and any predecessor, subsidiary, licensor, licensee, officer, director, partner, attorney, or other person in privity with Petitioner, or is applicable only to one of them, the answer shall so state, setting forth such difference and stating separately all information applicable to Petitioner and all information applicable to any other party.

1. The term "Registrant's Mark" as used herein refers to the mark covered by U.S. Trademark Registration No. 3,433,601.

2. The term "Registrant's Goods" as used herein refers to the goods identified in U.S. Trademark Registration No. 3,433,601.

3. "Person" or "persons" shall mean natural or judicially-created persons, firms, partnerships, joint ventures, government entities, social or political organizations, associations, corporations, divisions, or any other entity in any other department or other unit thereof, whether de facto or de jure, incorporated or unincorporated.

4. The terms "communication," "writing," and "document" are used in their customary broad sense as described in Federal Rule of Civil Procedure 34 and include, but are not limited to, copies of orders, acknowledgements thereof, contracts, invoices, bills, receipts, checks, books, records, reports, financial statements, letters, telegrams, notes, memoranda, calculations, diaries, worksheets, drafts, advertisements, and other tangible things, including originals and copies, whether typed, handwritten, or on tape or other recording, from whatever source, and any material underlying, supporting, or used in the preparation of any of such document or documents.

5. The term "identify," when used in reference to a natural person, means to:

- (a) state his or her full name;
  - (b) state his or her present or last-known address;
  - (c) state his or her present or last-known employer or business affiliation;
- and (d) state his or her occupation and business position held and the length of time in such position.

6. The term "identify," when used in reference to a corporation, partnership, or other business entity, means to:

- (a) state its full name;
- (b) state its present or last-known principal place of business;
- (c) state the nature of its business;
- (d) in the case of a corporation, set forth its State of incorporation;
- (e) state the identity of persons having knowledge of the matter with respect to which the company is named; and
- (f) state the identity of the executive officer or officers of the company.

7. The term "identify," when used in reference to a document, means to:

- (1) state the date, author, recipient, and type of document (e.g. invoice, delivery receipt, etc.) or some other means of distinguishing the document;
- (2) state the identity of each person who prepared the document;
- (3) state the identity of each person who received the document;
- (4) state the present location of the document;
- (5) state the manner and dates of distribution and publication of the document, if any; and
- (6) state the identity of each person having possession, custody, or control of the document.

8. The phrase "describe in detail" means that Petitioner is requested to state with specificity each and every fact, ultimate fact, particular circumstance, incident, act, omission, detail, event, and date, and to identify each and every document,

as herein defined, relating thereto or in any way whatsoever concerning the subject matters of inquiry.

9. The term "concerns" or "concerning" means in any way, directly or indirectly, relating to, referring to, relevant to, pertaining to, connected to, dealing with, reflecting, recording, considering, describing, discussing, evaluating, constituting, embodying, underlying, modifying, amending, confirming, mentioning, identifying, stating, endorsing, evidencing, representing, supporting, qualifying, terminating, revoking, concealing, negating, or is in any way pertinent to that subject matter.

10. The terms "all" and "each" shall be construed as all and each.

a. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all documents that might otherwise be construed to be outside of its scope.

b. The singular form of a word shall be understood to mean both the singular and the plural and vice versa.

#### INSTRUCTIONS

1. These Interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these Interrogatories which Petitioner acquires or which subsequently becomes known to Petitioner shall be furnished to Registrant promptly after such information is acquired or becomes known, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

2. In each instance where an Interrogatory is answered on information and belief, it is requested that Petitioner set forth the basis for such information and belief.

3. Should an Interrogatory not specifically request a particular fact or facts, but where such fact or facts are necessary to make the response to the Interrogatory

comprehensible or not misleading, Petitioner is requested to include such fact or facts as part of its response.

4. In each instance where Petitioner denies knowledge or information sufficient to answer the Interrogatory, it is requested that Petitioner set forth the name and address of each person, if any, known to have such knowledge or information.

5. In each instance where the existence of a document is disclosed, Petitioner is requested to attach a copy of such document to its Answer. If such document is not in Petitioner's possession, custody, or control, it is requested that Petitioner state the name and address of each person known to Petitioner to have such possession, custody or control, and identify which documents are in such person's possession, custody, or control.

6. These Interrogatories, unless otherwise noted, are limited to the United States of America and its territories.

#### INTERROGATORIES

1. For each of Petitioner's Goods sold under a mark containing the formative CAPE, state total annual sales, in terms of both unit and dollar volume, for each year since first use of such mark in commerce.

2. For each of Petitioner's Goods, specify the channels of trade through which they are sold or distributed.

3. Identify the person or entity who manufactures each of Petitioner's Goods and the locations where they manufacture each of (a) the housing, (b) the internal timekeeping mechanism, and (c) the watch band or other personal attachment means.

4. Identify each person with whom Petitioner has any business arrangement with respect to the marketing, distribution or sale of each of Petitioner's Goods, and describe that relationship.

5. Identify the URL of any website used in the sale, advertising or promotion of each of Petitioner's Goods.

6. Identify all expert witnesses who Petitioner intends to call to testify in this proceeding and state the subject matter of the witnesses' testimony.

7. Identify and describe all third party uses, registrations or applications upon which Petitioner intends to rely in this proceeding.

8. State whether Petitioner has ever received any communication, including misdirected mail, orders, emails or oral inquiries, from any person expressing any belief that watches sold by Registrant originate from, or are sponsored, endorsed or licensed by, Petitioner.

9. With respect to the Declaration under sections 8 & 15 filed for US Reg. No. 2,753,802, state the basis for the assertion that there was no proceeding pending which would call into question Petitioner's exclusive right to use the mark shown in Reg. No. 2,753,802.

10. For each of Petitioner's goods offered under a mark containing the formative CAPE, state (a) the manufacturing cost and (b) the current regular price at which it is offered for sale.

11. Identify each customer outside the State of New York who has purchased each of Petitioner's Goods sold under a mark containing the formative CAPE.

Respectfully submitted,

MICHAEL AKKAWI

DATE: JAN. 15, 2011

by his counsel

/Milton M. Oliver/

Milton M. Oliver, Esq.  
OLIVER INTELLECTUAL PROPERTY  
7 TEAL CIRCLE  
MASHPEE MA 02649-3676  
TEL: 774-521-3058  
FAX: 774-521-3062

CERTIFICATE OF SERVICE

I hereby certify that the attached document REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER was served on Petitioner by mailing a copy, first-class mail, to its counsel:

FOLEY & LARDNER LLP  
Att'n: Andrew Baum  
90 Park Avenue  
NEW YORK, NY 10016-1314

this 15th day of JAN. 2011.

  
Milton Oliver  
Milton Oliver



CERTIFICATE OF SERVICE

I hereby certify that the attached MOTION FOR LEAVE TO  
SUBMIT BELATED INITIAL DISCLOSURES OR TO STRIKE NOTICE OF RELIANCE  
was served on Petitioner by emailing a copy thereof to:  
abaum@foley.com & emarmo@foley.com, this 23<sup>rd</sup> day of JAN. 2012.

/Milton Oliver/

---

Milton Oliver